

STATE OF IOWA



Telephone: (515) 281-3592
Toll Free: 1-888-426-6283
TTY: (515) 242-5065
Fax: (515) 242-6007
E-mail: ombudsman@legis.state.ia.us
Website: <http://staffweb.legis.state.ia.us/cao>

WILLIAM P. ANGRICK II
CITIZENS' AIDE/OMBUDSMAN

CITIZENS' AIDE/OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

Date: January 10, 2008

To: Freedom of Information, Open Meetings, and Public Records Study Committee

From: William P. Angrick II, Ombudsman 

Re: Statement regarding Professor Bonfield's "Proposed Decision-making Agenda" dated November 19, 2007

On December 7, 2007 I sent you a memo with comments and suggestions my staff and I offer to Professor Bonfield's proposed legislative changes to Iowa's FOI laws. We identified some voids, ambiguities, and inconsistencies in the proposal that I recommend the committee consider further in developing this legislation.

For my brief presentation today, I want to stress those which I believe are critical to the successful improvement of Iowa's open meetings and open records laws and their enforcement.

1. The administrative enforcement agency you decide upon must be flexible and adequately resourced. The proposed enforcement body needs to have discretion to carry out its responsibilities. I urge you to enable the Board to:

- develop its own procedures and processes,
- self-initiate investigations,
- decline complaints for specified reasons after the initial consideration,
- conduct preliminary inquiries prior to engaging in mediations or investigations,
- contract with a professional mediation service when appropriate.

2. If possible, the Board should have the authority to:

- void an action if it finds a governmental body has violated chapter 21 or 22,
- remove a member of a governmental body for repeated violations of those laws.

The courts currently have this authority. (Bonfield, section 1, page 5)

3. Iowa should mandate training for all government officials and employees who hold public meetings and handle requests for government records about their responsibilities under chapters 21 and 22. Additionally all attorneys who advise or represent a governmental body in matters related to open meeting and public records should be required to obtain continuing legal education on these topics. (Bonfield, section 1, page 5)

Among the other proposed changes my office strongly believes:

4. The proposed "undue invasion of personal privacy" exemption is problematic in its breadth and vagueness. We are concerned the proposed language gives governmental bodies too much leeway which could result in unreasonable or inconsistent denials. I suggest in my memorandum a definition of "personal identifiable information" which I believe will offer additional guidance, at least for identity theft situations. (Bonfield, section 5, page 14)

5. Similarly, the proposed exemption for "tentative, preliminary and draft material" is too ambiguous and could lead to problems in its application. If this issue must be addressed legislatively at this time, we urge this exemption be carefully, concisely and conservatively considered. (Bonfield, section 7, page 16)

6. Regarding job applications, the definition of "finalist" should be amended to eliminate a numerical ceiling, in the event a governmental body wants to consider more applicants as finalists. On page 6 of my December 7th memo I suggested two alternatives to accomplish this. (Bonfield, section 9, page 18)

7. One topic not addressed in the legislative proposal is what we believe is a need to provide more guidance to governmental bodies regarding the retention of records and requiring them to develop policies for the storage, retention and disposition of records under their control.

The issue of records retention is closely linked to the open records law. Whether and how long records are retained affect the public's access to them. My memorandum discusses a number of issues and suggestions we hope you will consider. These include addressing apparent confusion amongst different governmental bodies regarding the retention of closed meeting minutes and tapes and also the retention of open meeting tapes after the written minutes have been adopted.

8. Another issue not in the proposal that we believe needs to be addressed is how law enforcement agencies interpret what information is required to be disclosed as "immediate facts and circumstances" as provided in sections 22.7(5) and 321.271(3). For example, should the name of a witness be released, if it does not jeopardize an investigation or endanger the individual? We are finding that law enforcement agencies across the state and even within the Des Moines metro area are inconsistent in their practices. There is a lack of legal precedence to follow, and there is subjectivity involved when considering what is an immediate fact or circumstance. Some states have more specific statutes that Iowa may want to consider.

Thank you for the opportunity to participate as the Committee considers these issues, which are of vital importance to Iowa's citizenry. What emerges from your work and becomes law will define Iowa for decades to come.